IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 10/99 AND CROSS OBJECTIONS NO.5/99
FIRST APPEALS NO.24 AND 96 OF 1999.

FIRST APPEAL NO. 10/1999 AND
CROSS OBJECTIONS NO.5/99

1. State of Goa,
   Through the Dy. Collector and
   Land Acquisition Officer, Margao.

2. Executive Engineer,
   W.D. XXI, P.H.E.,
   P.W.D., Fatorda, Margao,
   Goa. ... Appellants.

VERSUS

Shri Rafael Araujo,
r/o Verna, Goa. ... Respondent/
Objector.

FIRST APPEAL NO. 24/1999

1. State of Goa,
   Through the Deputy Collector &
   L.A.O., Margao, Goa.

2. The Executive Engineer,
   W.D. XXI, P.H.E.,
   P.W.D., Fatorda,
   Margao, Goa. ... Appellants.

VERSUS

Mrs. Leocardia Brigida Fernandes,
residing at Baina,
Vasco-da-Gama, Goa. ... Respondent.

FIRST APPEAL NO. 96 OF 1999.

1. State of Goa,
   Through the Deputy Collector &
   L.A.O., Margao, Goa.

2. The Executive Engineer,
   W.D. XXI, P.H.E.,
   P.W.D., FAtorda,
   Margao, Goa. ... Appellants.

VERSUS

Melicio Humberto Fernandes
(since deceased) now
represented by his legal
representatives:

1. Mrs. Mrinalina Fernandes.

2. Charlene Fernandes.

3. Mrs. Lilian Fernandes.
All residing at Madel,
Tivim, Barde, Goa. ... Respondents.

Mr. S. Vahidulla, Addl. Government Advocate
for the Appellants.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A.
Lobo, Advocate for the Respondents.

CORAM: N.A. BRITTO, J.

DATE: 6TH APRIL, 2004.

ORAL JUDGMENT:

These appeals are directed against a common Judgment/Award of the learned Addl. District Judge, Margao (Reference Court, in short) in LAC Nos.121/90, 122/90 and 119/90. As the facts and the law applicable are also common, they are being disposed by this common judgment.

2. Some facts are required to be stated to dispose of the present appeals.

3. By Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (Act, for short) published in Government Gazette dated 7.2.1985 the

Government acquired about 2804 sq.m. of land situated at Baina, Vasco-da-Gama, for the purpose of construction of Sewage Pumping Station. The respondent Raphael was the owner of chalta No.155/30 admeasuring about 3562 sq.m. out of which 137 sq.m. were acquired. The respondent Leocardia was the owner of Chalta No.155/25 admeasuring 3600 sq.m. out of which 114 sq.m. were acquired. Respondent Melicio was the owner of Chalta No.172/7 admeasuring about 764 sq.m., out of which 401 sq.m. were acquired.

4. The acquired land was situated at Baina and according to the evidence led on behalf of the respondents, the said land was situated within a distance of a kilometre from Baina Church, Railway Station and was surrounded with hutments of fishermen and there were also schools and hospitals with transport facilities available within a radius of a distance of 1 km.

5. The learned Reference Court after considering the various documents produced on behalf of the parties, chose to place reliance on a sale deed dated 23.12.80 (Exh.PW.1/I) produced on behalf of the respondents, in preference to another sale deed dated 10.11.83 (Exh.RW.2/C) produced on

behalf of the respondents. As regards the last sale deed, the learned Reference Court observed that it was pertaining to agricultural land where restrictions were imposed by the Mormugao Development Authority that its present use was agriculture and that no further construction would be allowed till the projected road was constructed by the Municipality and the plots were properly developed by the owners. The learned Reference Court further observed that because of those restrictions the said plot of Exh.RW.2/C admeasuring 720 sq.m. was sold at the price of Rs.28,800/- and that the appellants had also not brought any evidence to show at what distance the same was situated vis-a-vis the acquired land and whether it was having similar advantages as those of the acquired land, and, therefore in his opinion the said sale deed (Exh.RW.2/C) could not form the basis for fixing the compensation payable to the respondents. At the hearing of these appeals no grievance has been made on behalf of the appellants for rejecting the said sale deed dated 10.11.83 (Exh.RW.2/C) as being not suitable as basis for fixing the compensation for the acquired land.

6. The learned Reference Court placing reliance on the sale deed dated 23.12.80 (Exh.PW.1/I) and

after taking deduction of 30% towards development has fixed the price of the acquired land at Rs.100/- per sq.m. which comes to Rs.70/- per sq.m. and after having given increase of 10% for rise in prices has fixed the price of the acquired land at Rs.105/- per sq.m.

7. As far as the cases of the respondents Melicio and Leocardia are concerned, the first submission made on behalf of the appellants, by Shri Vahidulla, the learned Govt. Advocate is that both the respondents had sought compensation only at Rs.100/- per sq.m. and therefore the learned Reference Court could not have granted to them compensation at the rate of Rs.105/- per sq.m. In support of his submission, learned Govt. Advocate Shri Vahidulla has placed reliance on the case of **Ujjain Vikas v. Tarachand and another** (A.I.R. 1996 S.C. 2777). On the other hand, it has been submitted by learned Senior Advocate Shri D'Costa that what the Reference Court was determining under Section 18 of the Act was compensation which was required to be paid under Section 23 of the Act as on the date of Notification and therefore the compensation assessed could have been more than the compensation claimed by the said respondents.

8. Shri D'Costa has further submitted that the learned Reference Court was also considering the assessment of the compensation in cases which were clubbed together and therefore no fault could be found in case in the aforesaid two cases the compensation came to be assessed as claimed by the respondents. Reliance has also been placed by learned Senior Advocate Shri D'Costa on Section 28A of the Act which deals with re-determination of the amount of compensation on the basis of the Award of the Court and which provides that:" Where in an Award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under this

sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded ".

9. It is not necessary to go through sub-sections (2) and (3) of Section28-A of the Act.

10. In the said case of Ujjain Pradhikaran (supra) the Hon'ble Supreme Court was dealing with a case in which the appellants had confined their claim to enhancement of compensation to Rs.20,000/- per bigha in the memorandum of appeal filed in the High Court and the Hon'ble Supreme Court observed that the High Court was clearly in error in awarding compensation @ Rs.26,125/- per bigha. The Hon'ble Supreme Court therefore concluded that the High Court could not have granted the compensation more than claimed in the memo of appeal.

11. The learned Reference Court appears to have been conscious of the fact that the jurisdiction of the Reference Court was restricted to the terms of Reference and it was not open to it to award compensation in excess or higher than the one claimed by the interested parties in the application for reference. The learned Reference Court also appears to have referred to Section 28-A

of the Act in coming to the conclusion that the said two respondents would be entitled to claim Rs.105/- per sq.m. over Rs.100/- as claimed by them. In my opinion the approach of the Reference Court is incorrect. The provisions of Section 28-A of the Act are of a different import and application were not at all attracted to the facts of this case. The principle laid down by the Hon'ble Supreme Court in the case of Ujjain Pradhikaran (supra) is equally applicable to the facts of the case at hand where the said respondents had restricted their claim to Rs.100/- per sq.m,. and, therefore, in my opinion the learned Reference Court was wrong in awarding the said respondents compensation at the rate of Rs.105/- per sq.m. The first submission of learned Govt. Advocate Shri VAhidulla has therefore got to be accepted and the compensation payable to the said two respondents has got to be restricted to Rs.100/- per sq.m.

12. The second submission of learned Govt. Advocate Shri Vahidulla is that the acquired properties were agricultural lands namely coconut groves with some portion of paddy fields and therefore could not have been compared with the plot of sale deed dated 23.12.1980 - Exh.P.W.1/I

which was a developed plot. Referring to the evidence of AW.2 Ernest Moniz who was an expert examined by the said respondents, learned Govt. Advocate Shri Vahidulla has submitted that he has opined that the acquired lands could be used for construction not because they were suitable for construction but because of the expansion of the city. Another submission made by learned Govt. Advocate Shri Vahidulla is that having not relied upon the evidence of the expert, it was not open to the learned Reference Court to have straightaway deducted 30% towards development charges. Shri Vahidulla has tried to derive support from an unreported judgment of this court dated 30.1.2004 in First Appeal No.44/97 in the case of State of Goa through the Deputy Collector v. Smt. Rucmabai Raikar.

13. Learned Advocate Shri Vahidulla has also placed reliance on the case of **Smt. Padma Uppal v. State of Punjab and others** (A.I.R. 1977 S.C., 580).

14. In the said unreported decision of this Court dated 30.1.2004 what was involved was a strip of land of 4 x 44 m. having a cart track. This Court, after placing reliance on the case of **Shaji**

Kuriakose and another v. Indian Oil Corporation Ltd. and others (2001) 7 S.C.C., 650 observed that " It was not open to the learned Reference Court to have segregated the area of cart track from the total area of the acquired land in this case and award lesser amount for the cart track land and higher amount for the remaining land. The learned Reference Court ought to have considered whether the area of 165 sq. metres was capable of development i.e. whether the said acquired land had any building potentials. In view of the fact that a cart track was running through the length of the acquired land and as admitted by the Respondent through his witness, A.W.1 who has admitted that the said cart track was being used by the public as a way for a long time. Thus, the acquired land would have absolutely no building potentials whatsoever". This Court therefore concluded that the acquired land had no building potential as on the date of the notification under Section 4 of the Act.

15. In the case of Smt. Padma Uppal (supra) the Hon'ble Supreme Court observed that in case where the land sought to be acquired was classified into two categories namely a potential building area and agricultural lands and apart from the fact that the

land which fell within the second category was situate in the rear away from habitation it suffered from two other drawbacks in that it was not accessible from either side of the two roads and there are no roads therein and therefore the owners cannot be justifiably be granted compensation for the agricultural land at the rate determined in respect of the potential building area which possessed far greater advantages,

16. In my opinion, both the judgments cited by Shri Vahidulla in the case of State of Goa through Deputy Collector v. Smt. Rucmabai Raikar (supra) as well as in the case of Smt. Padma Uppal (supra) are not at all attracted to the facts of this case. The respondents had examined Aw.4 Gaspar Rodrigues, the purchaser of the sale deed dated 23.12.80 (Exh.AW.1/I) who had stated that he had paid Rs.100/- per sq.m. for the said plot admeasuring 312 sq.m. which plot was plain and sandy. He also stated that the property of respondent Leocardia was at a distance of about 30 metres from his property and then came the property of Raphael and further was the property of Melicio at a distance of 20 metres and the land belonging to the said persons as well as the land purchased by him was of the same condition. Similarly, AW.2 Shri Moniz the

expert examined on behalf of the said respondents, had stated that the type of soil in all the properties was sandy and the said properties were located at Baina where there were many old houses and it was a residential area. From the evidence of the said two witnesses it could be safely concluded that the nature of the plot of sale deed dated 23.12.80 (Exh.AW.1/I) was similar to the nature of the acquired properties of the said respondents and therefore the price obtained for the plot of sale deed dated 23.12.80 (Exh.AW.1/I) could be used as a guide for fixing the compensation payable to the said respondents. I am unable to agree with the submission of learned Govt. Advocate Shri Vahidulla that having rejected the opinion of AW.2 Shri Moniz, the Reference Court was not entitled to deduct 30% of the price obtained for the sale deed (Exh.AW.1/I) towards development cost. It is now well settled with several decisions of the Hon'ble Supreme Court that some guesswork, surmises and conjectures are permissible in assessing compensation though the same ought not to be assessed only on fits of imagination. In my opinion, the learned Reference Court having found that the acquired lands were similar to the land of the plot of sale deed dated 23.12.80 (Exh.AW.1/I) was certainly justified in

deducting 30% towards development cost and fixing the compensation payable to the said respondents at Rs.90/- per sq.m. Likewise the learned Reference Court was also justified in adding 10% of price increase for every year, but certainly was not justified in fixing the price at Rs.105/- per sq.m. in the case of the said two respondents when they had claimed only Rs.100/- per sq.m. As rightly pointed out by the Hon'ble Supreme Court in the case of **Smt. Padma Uppal** (supra) a Court of appeal is required to interfere not when the judgment under attack is not right but only when it is shown to be wrong. In my opinion, considering the location of the acquired lands, though they were agricultural in nature and mainly coconut groves, the appellants had not shown that there was any impediment that they could not be put to construction use. AW.2 Shri Moniz had also opined, for one or other reason, that they were fit for construction. In the circumstances the learned Reference Court was fully justified in using the sale deed dated 23.12.80 - Exh.AW.1/I as a guide to enhance the compensation payable to the said respondents.

17. As far as the cross objections in F.A. No.10/99 in the case of respondent Raphael Araujo

are concerned, all that has been submitted by learned Senior Advocate Shri Bruto D'Costa is that AW.1 Raphael's statement that the Government utilised his property from the year 1978 has gone uncontroverted. Shri D'Costa has further submitted that the said respondent in his claim application dated 11.9.87 (Exh.AW.1/F) had stated that the possession of the property was taken in January, 1978. Learned Advocate Shri D'Costa also referred to para 2 of the written statement in Civil Suit No.82/87, a copy of which is in LAC No.121/80 and submitted that the appellants had admitted the contents of certain paras of the plaint but when learned Sr. Advocate Shri Costa was asked about the said plaint, learned Advocate was unable to point out a copy of the said plaint on record and proceedings of the learned Reference Court. However, the fact remains that the said respondent Raphael had examined AW.3 Assistant Engineer Shri Kamat who did not support his case that the possession was taken in the year 1978. Only because there was no denial put to the statement of the said respondent Raphael, it does not necessarily mean that the same ought to have been accepted. The learned Reference Court has rightly come to the conclusion that the case of the said respondent that possession was taken in the year

1978 has remained unsubstantiated by any evidence and therefore it could not be accepted. In my opinion, the said conclusion cannot be faulted.

18. In view of the above, the appeals filed in the cases of respondents Melicio H. Fernandes and Mrs. Leocardia B. Fernandes deserve to succeed, in that the compensation for the acquired land in their cases will be restricted to Rs.100/- as claimed by them while in the case of respondent Raphael, the same shall be Rs.105/- as fixed by the learned Reference Court. Needless to observe that the said respondents would be entitled to all statutory benefits payable to them on the said compensation under the Act. Considering the facts, there will be no order as to costs.

N. A .BRITTO, J.

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